

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**CAPITAL ONE BANK (USA), N.A., and
CAPITAL ONE SERVICES, INC.,**

Plaintiffs,

v.

CIVIL ACTION NO. 2:08-CV-00165

DARRELL V. McGRAW, JR., in his official
capacity as West Virginia Attorney General,

Defendant.

**MOTION FOR HEARING ON
DEFENDANT'S MOTION TO MODIFY JUNE 26, 2008
ORDER OF THIS COURT AND THE RESPONSES THERETO**

On August 19, 2009, the State of West Virginia moved the Court to modify its June 26, 2008 injunction by dissolving the prohibition of the Attorney General's suing Capital One Bank (USA), N.A. to enforce non-preempted substantive state laws. On September 4, 2009, Capital One Bank and Capital One Services, Inc., filed their response to the motion. On September 14, 2009, the State of West Virginia filed its reply to Plaintiffs' response.

WHEREFORE, the State of West Virginia requests that a hearing be scheduled in this matter to consider and act upon the State's motion and the responses thereto.

Respectfully submitted,

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

By counsel

s/ FRANCES A. HUGHES

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CERTIFICATE OF SERVICE

I, Charli Fulton, Sr. Assistant Attorney General, Consumer Protection/Antitrust Division, do hereby certify that a true and accurate copy of the foregoing **MOTION FOR HEARING ON DEFENDANT'S MOTION TO MODIFY JUNE 26, 2008 ORDER OF THIS COURT AND THE RESPONSES THERETO**, was served upon the Plaintiffs by electronic transmission, this 2nd day of October, 2009 as follows:

Niall A. Paul, WV Bar No. 5622
Bruce M. Jacobs, WV Bar No. 6333
Spilman Thomas & Battle, PLLC
300 Kanawha Boulevard, East
Charleston, West Virginia 25301

and by serving a copy by United States First Class Mail this 2nd day of October, 2009 as follows:

James R. McGuire (Visiting Attorney)
Rata F. Lin (Visiting Attorney)
Morrison & Foerster LLP
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/s/ Charli Fulton
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